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**IN THE
COURT OF APPEALS OF INDIANA**

GUY DEAN SMITH,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 27A04-0703-CR-159
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-0309-FB-119

August 3, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Guy D. Smith pled guilty to three counts of Class C felony child molesting in exchange for the State's dismissal of two counts of Class B felony child molesting. Smith agreed to a concurrent sentence of eight years on each count, with four years suspended to supervised probation. Smith's probation was subsequently revoked, and Smith now appeals the sufficiency of the evidence supporting the trial court's finding that he violated the terms of his probation. We affirm, concluding that sufficient evidence supported the trial court's finding.

Facts and Procedural History

The facts most favorable to the judgment indicate that on September 27, 2005, Smith was released from incarceration and signed conditions of probation. Smith's initial probation terms prohibited him from consuming alcohol or having unsupervised contact with any child under the age of eighteen. Smith was also required to participate in periodic polygraph testing.

In March of 2006, after examining the results of a polygraph test taken by Smith, Smith's probation officer revised the no-contact provision in order to prohibit Smith from having any contact with children, supervised or unsupervised. In October of 2006, Smith admitted to a polygraph examiner and his therapists that he drank alcohol on two prior occasions while visiting his friends, and that during these visits, he had also made physical contact with these friends' minor children. One of Smith's therapists testified that he asked Smith to inform his friends of his criminal history, but Smith appeared reluctant to do so. On

October 26, 2006, the State filed a petition to revoke Smith's probation, alleging Smith had violated the conditions of probation by consuming alcohol and having contact with minor children.

During a hearing held on December 18, 2006, the trial court found that Smith violated the terms of his probation on both allegations. Smith was ordered to serve the remainder of his previously suspended sentence. Smith now appeals.

Discussion and Decision

Smith argues the State failed to present sufficient evidence to prove that the children with whom he allegedly had contact were under the age of eighteen. Smith argues that his cause should be remanded for re-sentencing with instructions that the trial court consider only Smith's admission of consuming alcohol.

I. Standard of Review

Probation revocation proceedings are civil in nature. Thornton v. State, 792 N.E.2d 94, 96 (Ind. Ct. App. 2003). Accordingly, the State must prove a violation of probation by a preponderance of the evidence. Id.; Ind. Code § 35-38-2-3(e). When reviewing a challenge to the sufficiency of the evidence supporting probation revocation, we apply the same standard used to determine any other sufficiency question. Sutton v. State, 689 N.E.2d 452, 454 (Ind. Ct. App. 1997). We will not reweigh the evidence or assess the credibility of the witnesses. Cox v. State, 774 N.E.2d 1025, 1028 (Ind. Ct. App. 2002). We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. Alspach v. State, 755 N.E.2d 209, 210-11 (Ind. Ct. App.

2001), trans. denied.

II. Contact With Children

At the probation revocation hearing, a polygraph examiner testified:

Q. Did he make any statements regarding having contact [with] children?

A. He did.

Q. Did those statements include physical contacts he had had with children?

A. Yes they did.

Q. Would you tell the judge what you can recall, uh, Mr. Smith told you regarding his physical contact with minor children?

A. Uh, hugging, uh, there was a game where they would take sunglasses that belonged to him off a table an' he would chase them down an' tickle them until they dropped the sunglasses, uh, he mentioned some attempts to sit on his lap, uh, those types of contacts.

Transcript at 22-23. One therapist also testified:

Q. Alright. Has he ever made statements to you regarding having physical contact with children? Minor children.

A. Yes he has.

Q. What has he told you?

A. Um, he described the incidences...of being at his friend's house an' that the children had approached him an' that there was, it was tickling an' hugging.

Id. at 29. Although the evidence did not directly show the children were less than eighteen years of age, the trial court could have inferred this fact from the witnesses' testimony. See Staton v. State, 853 N.E.2d 470, 474 (Ind. 2006) (“[C]ircumstantial testimonial evidence can be sufficient to prove age”); Altmeyer v. State, 519 N.E.2d 138, 141 (Ind. 1988). The trial court could have inferred from the references to “minor children” and the types of contact involved in the game of tickling and hugging that the children were less than eighteen years of age. Thus, a reasonable trier of fact could have determined by a preponderance of the evidence that Smith maintained contact with children in violation of his probation terms.

Conclusion

The State presented sufficient evidence that Smith had violated the terms of his probation. For this reason, we affirm the revocation of Smith's probation.

Affirmed.

SULLIVAN, SR. J., and VAIDIK, J., concur.